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10 Attorneys for Plaintiff
11 AMERIS BANK d/b/a BALBOA CAPITAL CORPORATION

12
13 THE UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15
16 AMERIS BANK, a Georgia state-
17 chartered banking corporation, doing
business as BALBOA CAPITAL
CORPORATION,

18 Plaintiff,

19 vs.

20 R&P CONTRACTORS LLC, a
21 Maryland limited liability company;
22 ROLANDO ALFONSO PINEDA, an
individual,

23 Defendants.
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Case No.:

**PLAINTIFF AMERIS BANK D/B/A/
BALBOA CAPITAL
CORPORATION'S COMPLAINT
FOR:**

- 1. BREACH OF EQUIPMENT
FINANCING AGREEMENT**
- 2. BREACH OF PERSONAL
GUARANTY**

1 Plaintiff Ameris Bank, a Georgia state-chartered banking corporation doing
2 business as Balboa Capital Corporation (“Balboa” or “Plaintiff”), alleges as
3 follows:

4 **PARTIES AND JURISDICTION**

5 1. Plaintiff Ameris Bank d/b/a Balboa Capital Corporation (“Balboa” or
6 “Plaintiff”) is, and at all times relevant to this action was, a Georgia state-chartered
7 banking corporation with Balboa Capital Corporation as one of its divisions, which
8 division has its principal place of business in the State of California, County of
9 Orange.

10 2. Defendant R&P Contractors LLC (“R&P Contractors”) is, and at all
11 times relevant to this action was, a Maryland limited liability company with its
12 principal place of business in the County of Prince George, State of Maryland.

13 3. Defendant Rolando Alfonso Pineda (“Pineda”), an individual, is and at
14 all times relevant to this action was, a resident of the County of Fairfax, State of
15 Virginia and was an officer, director, shareholder, agent and/or owner of Defendant
16 R&P Contractors.

17 4. Plaintiff is informed and believes and thereon alleges that each
18 Defendant, directly or indirectly, or through agents or other persons, was engaged
19 with some or all of the other Defendants in a joint enterprise for profit, and bore
20 such other relationships to some or all of the other Defendants so as to be liable for
21 their conduct with respect to the matters alleged below. Plaintiff is informed and
22 believes and thereon alleges that each Defendant acted pursuant to and within the
23 scope of the relationships alleged above, that each Defendant knew or should have
24 known about the foregoing, and that each Defendant authorized, ratified, adopted,
25 approved, controlled, and aided and abetted the conduct of all other Defendants.

26 5. The obligations sued upon herein are commercial in nature and the
27 Complaint herein is not subject to the provisions of California Civil Code Sections
28

1 1801, *et seq.* (Unruh Retail Installment Sales Act) and/or California Civil Code
 2 Sections 2981, *et seq.* (Rees-Levering Motor Vehicle Sales and Finance Act).

3 6. Pursuant to the Equipment Financing Agreement and Guaranty
 4 described herein below, defendant R&P Contractors and defendant Pineda agreed
 5 those agreements would be governed by the laws of the State of California. In
 6 addition, the Equipment Financing Agreement provides, in pertinent part, as
 7 follows:

8 **25. GENERAL.** ... THIS AGREEMENT SHALL BE
 9 GOVERNED BY THE LAW OF THE STATE OF
 10 CALIFORNIA. DEBTOR SUBMITS TO THE
 11 JURISDICTION OF CALIFORNIA AND AGREES
 12 THAT THE CALIFORNIA STATE COURTS OF
 13 ORANGE COUNTY AND/OR THE UNITED STATES
 14 DISTRICT COURT FOR THE CENTRAL DISTRICT OF
 CALIFORNIA, SANTA ANA DIVISION, SHALL
 HAVE EXCLUSIVE JURISDICTION OVER ANY
 ACTION OR PROCEEDING TO ENFORCE THIS
 AGREEMENT OR ANY ACTION OR PROCEEDING
 ARISING OUT OF THIS AGREEMENT.

15 7. Jurisdiction. This Court has jurisdiction over the case pursuant to 28
 16 U.S.C. §1332(a).

17 8. Venue. This case is properly venued in this judicial district pursuant to
 18 28 U.S.C. §1391(b)(2) and in the Southern Division pursuant to 28 U.S.C.
 19 §84(c)(3).

20 **FIRST CAUSE OF ACTION**

21 **(Breach of Equipment Financing Agreement)**

22 **(Against R&P Contractors)**

23 9. Balboa alleges and incorporates by reference each and every allegation
 24 contained above, inclusive, as though each were fully set forth here.

25 10. Prior to August 2021, Balboa is informed and believes that R&P
 26 Contractors initiated and engaged with Ritchie Bros. Financial Services LTD.
 27 located at 9500 Glenlyon Parkway Burnaby, BC V5J 0C6 ("Equipment Vendor"),
 28 in order to coordinate the acquisition and financing of certain equipment

1 (hereinafter referred to as the “Collateral”) for its business. The Equipment Vendor
2 worked with R&P Contractors in the selection of the Collateral and in coordinating
3 its delivery.

4 11. Thereafter, Balboa is informed and believes, and therefore alleges, that
5 the Equipment Vendor initiated and coordinated submission of Defendants’
6 electronic credit application to Balboa and other financial institutions. Upon
7 review, R&P Contractors concluded that Balboa offered agreeable terms to finance
8 the Collateral commensurate with its requirements. Thereafter, the Equipment
9 Vendor accumulated and submitted to Balboa the requisite signatories,
10 documentation and financial information from the Defendants to finance the
11 Collateral being supplied by the Equipment Vendor.

12 12. On or about August 19, 2021, R&P Contractors executed a certain
13 written Equipment Financing Agreement No. 364077-000 (the “EFA”), under the
14 terms of which Balboa loaned to R&P Contractors the principal sum of One-
15 Hundred Forty-Four Thousand Five-Hundred Seventy-Five Dollars and Zero Cents
16 (\$144,575.00) in order to finance the Collateral for its business. The EFA required
17 R&P Contractors to make fifty-seven (57) monthly payments of \$3,114.77, payable
18 on the 17th day of each month beginning September 17, 2021. A true and correct
19 copy of the EFA is attached as **Exhibit A** and is incorporated here by reference.

20 13. The last payment received by Balboa was credited toward the monthly
21 payment due for September 17, 2023. Therefore, on or about October 17, 2023,
22 R&P Contractors breached the EFA by failing to make the monthly payment due on
23 that date. Defendant R&P Contractors’ failure to make timely payments is a default
24 under the terms of the EFA.

25 14. In accordance with the EFA, and as a proximate result of R&P
26 Contractors’ default thereunder, Balboa declared the entire balance of the payments
27 under the EFA to be immediately due and payable to Balboa. In addition, pursuant
28 to the EFA, Balboa is entitled to recover all accelerated payments due under the

1 EFA. Therefore, there became due the sum of \$109,016.95. These amounts are
2 exclusive of interest, attorneys' fees and costs, no portion of which sum has been
3 paid by R&P Contractors.

4 15. In addition, the terms of the EFA provide that R&P Contractors is
5 liable to Balboa for late charges on all payments not made in a timely manner. As
6 of the date of the filing of Balboa's Complaint, late charges in the sum of \$5,232.78
7 are now due and owing.

8 16. In addition, the terms of the EFA provide that R&P Contractors is
9 liable to Balboa for field visit charges on all payments not made in a timely manner.
10 As of the date of the filing of Balboa's Complaint, field visit charges in the sum of
11 \$190.00 are now due and owing.

12 17. Balboa has performed all of the terms, conditions, and covenants
13 required to be performed by it under the terms of the EFA, except as excused or
14 prevented by the conduct of R&P Contractors.

15 18. As a proximate result of R&P Contractors' breach of the EFA, Balboa
16 has been damaged in the total sum of \$114,439.73, plus prejudgment interest from
17 October 17, 2023, until the entry of judgment herein.

18 19. Further, under the terms of the EFA, R&P Contractors promised to pay
19 all costs, including reasonable attorneys' fees, incurred by Balboa in the
20 enforcement of the EFA. Therefore, Balboa requests the Court award Balboa its
21 reasonable attorneys' fees and costs as against R&P Contractors.

22 20. The EFA also provides Balboa the remedy of possession of the
23 Collateral and to obtain an order that Balboa may, in accordance with applicable
24 state law, sell the remaining Collateral and apply the net proceeds from the sale to
25 the remaining loan balance. Alternatively, if possession cannot be had, Balboa is
26 entitled to recover the value of the Collateral.

SECOND CAUSE OF ACTION

(Breach of Guaranty)

(Against Pineda)

21. Balboa alleges and incorporates by reference each and every allegation contained above, inclusive, as though each were fully set forth here.

22. Concurrent with the execution of the EFA, and in order to induce Balboa to enter into the EFA with R&P Contractors, Pineda guaranteed, in writing, the payment of the then existing and future indebtedness due and owing to Balboa under the terms of the EFA. A true and correct copy of the written Personal Guaranty signed by Pineda (the “Guaranty”) is attached as **Exhibit B** and incorporated herein by reference.

23. Balboa has performed all the terms, conditions, and covenants required to be performed by Balboa under the terms of the Guaranty, except as excused or prevented by the conduct of Pineda.

24. Following a default of R&P Contractors under the terms of the EFA, Balboa demanded Pineda make the payments required under the EFA. Pineda failed to meet the Guaranty obligations and make the payments required under the EFA.

25. Pursuant to the terms of the Guaranty, the sum of \$114,439.73, plus prejudgment interest from October 17, 2023, is due and payable to Balboa from Pineda. This Complaint, in addition to previous demands, shall constitute further demand upon Pineda to pay the entire indebtedness due and owing from R&P Contractors to Balboa under the terms of the EFA.

26. Under the terms of the Guaranty, Pineda promised to pay all costs, including reasonable attorneys’ fees, incurred by Balboa in the enforcement of the EFA and the Guaranty. Therefore, Balboa requests the Court award Balboa its reasonable attorneys’ fees and costs as against Pineda.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Balboa prays for judgment against Defendants, and each of them, as follows:

On the First and Second Causes of Action:

1. The principal sum \$114,439.73;
2. Prejudgment interest from October 17, 2023 to the date of entry of judgment;
3. Late charges and non-sufficient charges in an amount to be proven at trial;
4. An order to recover possession of the Collateral which is the subject of the EFA, or if the Collateral cannot be delivered, for its reasonable value according to proof;
5. Reasonable attorneys' fees and costs;
6. Costs of suit as provided by law; and
7. Such other and further relief that the Court considers proper.

DATED: December 21, 2023

SALISIAN | LEE LLP

By: 

Neal S. Salisian

Glenn Coffman

Jared T. Densen

Attorneys for Plaintiff
AMERIS BANK d/b/a BALBOA CAPITAL
CORPORATION